

Date: May 28, 2015

TO: THE MUNCIE BAR ASSOCIATION AND THE GENERAL PUBLIC

Notice of Proposed Amendment to the Attorney Fees in  
Probate Matters Local Rule LR18-AR01-DLR-0011  
June 1, 2015

The Delaware County Board of Judges pursuant to Trial Rule 81 give notice to the bar and the public of their proposed amendment to the Attorney Fees in Probate Matters, Local Rule LR18-AR01-DLR-0011 **effective January 1, 2016**. All new text is shown by underlining and deleted text is shown by ~~strikethrough~~.

The time period for the bar and the public to comment shall begin on June 1, 2015, and shall close on July 1, 2015. The proposed amendment to the rule will be adopted, modified or rejected before July 31, 2015.

Comments by the bar and the public should be made in writing to:

The Honorable Kimberly S. Dowling, Presiding Judge of the DELAWARE Circuit Court c/o Lana L. Scroggins, Court Administrator, Attn: Public Comment on Local Rules, DELAWARE County Justice Center, 100 W. Washington Street, Muncie, Indiana. Or, e-mail to: [llscroggins@co.delaware.in.us](mailto:llscroggins@co.delaware.in.us)

A paper copy of the proposed amended local rule will be made available for viewing in the office of the Clerk of Delaware County, Delaware County Courthouse, 100 W. Main Street, Muncie, Indiana and the Delaware County Clerk's Filing Office, Delaware County Justice Center, 100 W. Washington Street, Muncie, Indiana during normal business hours. Persons with Internet access may view the proposed amended Court Reporter Local Rule at the following websites: <http://www.co.delaware.in.us/clerk/> and <http://www.courts.IN.gov/rules/local>

DELAWARE COUNTY BOARD OF JUDGES

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STATE OF INDIANA                    )  
  )SS:                   IN THE DELAWARE CIRCUIT COURT  
COUNTY OF DELAWARE    )

LOCAL RULE REGARDING FEES IN PROBATE MATTERS, AND ACKNOWLEDGEMENT BY  
PERSONAL REPRESENTATIVE OF RECEIPT OF LOCAL RULE REGARDING FEES IN  
PROBATE MATTERS COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE OF  
UNSUPERVISED ESTATE, COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE OF  
SUPERVISED ESTATE, COURT'S INSTRUCTIONS TO GUARDIANS AND  
ATTORNEY'S UNDERTAKING AND OBLIGATION

**LR18-AR01-DLR-0011**  
**Fees in Probate Matters**

The Delaware Circuit Court has prepared the following guidelines for fees in probate matters in an effort to achieve the following objectives:

1. To establish uniformity in determining a fair and reasonable fee for supervised and unsupervised estates, guardianships, wrongful death actions, and minor's claim settlements in Delaware County, Indiana.
2. To provide a guideline to assist all judges of the Circuit Court of Delaware County in determining fair and reasonable fees.
3. To furnish a guideline to attorneys so that attorneys can forecast to their clients the fees the estate may incur before the administration commences.
4. To assist the legal profession in arriving at a fair and reasonable fee for estate work. This schedule is not a minimum fee schedule but a maximum fee schedule. The Court recognizes that every attorney and personal representative has a right and an obligation to request a fee which is fair and reasonable for the estate work performed, taking into account the provision in the Rules of Professional Conduct which applies to all attorneys admitted to practice in Indiana. Fees should always bear a reasonable relationship to the services rendered. In an uncomplicated estate, a reasonable fee may be less than the maximum fees listed in the following schedule and should not be based solely upon the percentages set out in said schedule.

In determining an appropriate fee, the attorney, client, and Court should consider the following criteria:

1. The time required; the novelty, complexity, or difficulty of the legal questions involved; and the skill required to perform necessary services properly.
2. Who served as personal representative. The Court may consider how much time the attorney devoted to legal matters and how much time the attorney devoted to ministerial functions during supervision and representation of the personal representative.
3. The total fair market value of the probate assets being administered.
4. The character of the probate and non-probate assets which are administered or transferred, including whether non-probate assets exist which must be included for federal or state estate tax purposes, and whether these non-probate assets require more work for the attorney.
5. Whether the probate assets are sufficient to pay for legal services or personal representative fees.
6. Timeliness in performing necessary estate services under statutory requirements, these rules, and the Rules of Professional Conduct.
7. Other factors deemed relevant by the attorney, personal representative, and/or the Court.

## Personal Representative and Attorney Fee Schedule

### **I. Administration of the Gross Estate.**

**A. Gross Estate Services** include, but will not necessarily be limited to, opening the estate and qualifying the personal representative; preparing and filing the inventory; collecting assets; paying claims; preparing and filing non-extraordinary petitions (including but not limited to petitions to sell real or personal property, petitions to deliver personal property to beneficiaries, petitions to abandon real or personal property, and petitions for appointment of appraisers); ~~preparing and filing the Inheritance Tax Schedule and obtaining court approval; paying inheritance taxes;~~ preparing and filing the final report; obtaining an order approving the final report; distributing assets to beneficiaries; obtaining discharge of the personal representative; preparing and filing the supplemental report after distribution; and preparing and serving all necessary notices on interested parties, including readily ascertainable creditors of the estate, during the estate proceeding.

**B. Gross Estate Value** means the fair market value of all assets in the decedent's name and included in the decedent's probate estate.

**C. Maximum Fees for Administering the Gross Estate:** the Court may approve the following maximum fees:

#### **1. Individual Personal Representative:**

<b>Fair Market Value Of Probate Estate Including Income</b>	<b>Percent Rate For Individual Personal Representative</b>	<b>Percent Rate For Professional Services of Attorney</b>
First \$25,000.00	4%	8%
Next \$25,000.00	3%	6%
Next \$50,000.00	2 ½%	5%
Next \$900,000.00	1 ½%	3%
Next \$1,500,000.00	1%	2%
Excess of \$2,500,000.00	½%	1%

Where the attorney acts as both the attorney and Personal Representative, the above schedule will be applied.

#### **2. Corporate Personal Representative**

<b>Fair Market Value Of Probate Estate Including Income</b>	<b>Percent Rate For <del>Individual</del> Corporate Personal Representative</b>	<b>Percent Rate For Professional Services of Attorney</b>
First \$25,000.00	6%	6%
Next \$25,000.00	5%	5%
Next \$50,000.00	4%	4%
Next \$900,000.00	3%	3%
Next \$1,500,000.00	2%	2%
Excess of \$2,500,000.00	1%	1%

#### **D. Non-Probate Assets.**

Non-probate assets are those assets for which the attorney representing the personal representative may assist the transferee of those assets in distribution. Non-probate assets include, but are not necessarily limited to: assets jointly owned which are transferred outside the estate administration; life insurance proceeds; annuities; retirement benefits payable to a named beneficiary other than the estate; and assets held in trust which are reportable on the federal transfer tax return or would be reportable if such return were required. Fee charges for assisting beneficiaries or transferees in transferring Non-Probate Assets shall conform to the hourly rate provision established by the Court in paragraph E below. Unless the will admitted to probate provides otherwise, fees generated by the attorney in administering Non-Probate Assets should be charged to the beneficiary or transferee, and not to the estate.

#### **E. Additional Fees.**

Fees computed on the above schedule are intended to cover only the usual and ordinary services that are reasonably anticipated in handling the normal estate. Such fees do not contemplate all work which may become necessary in conjunction with administration, such as will contests; will construction; contested claims; family settlement agreements; death tax complications; petition for instructions; determination of heirship; generating additional income for the estate during administration; and other similar matters. The attorney shall detail the request for additional fees in a Petition to the Court for Additional Fees.

The Court will compensate attorneys for work involving extraordinary service at an hourly rate. The attorney's hourly rate should conform to the prevailing hourly rate for legal services provided in Delaware County, Indiana, at the time the attorney provided the extraordinary services. The Court reserves the right to review and adjust the hourly rate request after considering the attorney's expertise and the nature of the extraordinary services provided.

#### **F. Unsupervised Estates.**

The attorney and personal representative should negotiate fees for handling unsupervised estates. The Court shall not hear the requests for fees unless an objection to the closing statement is timely filed. In the absence of evidence to the contrary, the fees for handling unsupervised estates should not exceed eighty percent (80%) of the above schedules.

#### **G. Petitions and Hearings on Fee Requests.**

All requests for approval of estate ~~or guardianship~~ fees in supervised estates shall be submitted to the Court in writing, along with an appropriate proposed order. Petitions for fees shall include affidavits in support thereof from the attorney and the personal representative and provide the following information:

1. Details as to the work done by the affiant.
2. Time spent to accomplish said work.
3. Hourly rate used to calculate fees.
4. Total amount of fees being requested.

If the fee requested to administer the Gross Estate conforms to the Guideline in Paragraph I. (C), the Court may waive a hearing on the Petition.

If the petition to approve fees includes a request for additional fees, the Court will schedule a hearing on the petition, unless all interested parties execute a waiver and consent stating they have been advised that the fee request exceeds the Court's guidelines for administering the Gross Estate and that the fee request is for additional services. A proposed waiver and consent form is attached to this fee schedule, and the waiver and consent should be in the same or similar form as the attachment. If a waiver and consent form is filed with the petition for additional fees, the Court, at its discretion, may waive the requirement for hearing on the petition.

## **II. Wrongful Death Claim Administration.**

If a wrongful death claim is settled before trial, the fee should not exceed 33 1/3 percent of the settlement amount.

If a wrongful death action proceeds to trial by court or by jury, the attorney fee should not exceed 40 percent of the court or jury award.

If a wrongful death action is appealed after trial, the attorney fee should not exceed 50 percent of the court or jury award.

The fee schedule for wrongful death actions does not preclude the attorney from recovering litigation expenses incurred in preparing for trial or in pre-trial discovery proceedings.

## **III. Guardianship Fees.**

Attorneys should charge fees generated in guardianship proceedings at the customary and prevailing hourly rates in Delaware County for opening the guardianship; selling real or personal property; assisting the Guardian in filing the inventory and necessary accounting; and providing professional advice.

Attorneys shall submit petitions to approve attorney fees in writing in all cases, along with an appropriate proposed order. Petitions for fees for both the guardian and the attorney for the guardian shall include affidavits in support thereof and provide the same information as outlined in Paragraph IG herein. The Court, at its discretion, may require a hearing on the fee request of the attorney or the Guardian.

## **IV. Fees for Compromising, Settling, or Trying a Minor's Claim.**

Fee requests to compromise, settle, or try a minor's claim should not exceed the fee limitations imposed by the Court for representing the client in a wrongful death action; however, the attorney may request reimbursement for suit costs and pre-trial discovery in addition to those fees.

COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE  
OF UNSUPERVISED ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court. Keep one copy for your records.

Introduction:

You have been appointed as the personal representative of the estate of a deceased person. By your appointment, the Court has placed in you the highest trust that you will perform your duties in the best interests of all beneficiaries and creditors of the estate. It is important that you fully realize your duties and responsibilities. Listed below are some, but not all of them.

You must be represented at all times by an attorney of record approved to so act by written order of the Court. Your attorney is required to reasonably supervise and guide your actions as personal representative unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the beneficiaries and creditors of the estate and by signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as personal representative.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration.

As personal representative, it is your responsibility to:

1. Inspect all documents and personal papers of the decedent and retain anything pertinent to tax reporting, location and value of assets, debts or obligations of or to the decedent, or any other items of significance to administration of the estate of the decedent.
2. Locate, collect and maintain all property owned by the decedent.
3. Keep motor vehicles and real estate insured and protected.
4. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.
5. Determine the values of all assets on the date of death, obtaining appraisals if needed.
6. Inventory the contents of any safety deposit box.
7. Collect any proceeds of life insurance on the life of the decedent which is payable to the estate. Obtain Form 712 from the insurance company, if needed for taxes.
8. Sign your name as "Personal Representative for the Estate of (name of decedent)"

on accounts and securities which are registered to the estate.

9. Open a separate checking account in your name as “personal representative for the estate of (the decedent)”, and NEVER CO-MINGLE your funds or anyone else's funds with this account. Always make estate expenditures by check and retain proof of payment. Make sure the bank is willing to return cancelled checks to you if needed. Obtain a federal I.D. number for the checking account. Do not use your Social Security number or decedent's Social Security number.

It is recommended by the court that you leave the checkbook with your lawyer so that the lawyer can aid you in maintaining accurate records of receipts and expenditures for final accounting purposes.

A. DO NOT put any of your funds or *anyone* else's funds in the estate checking account.

B. Always pay for estate expenses by checks from the estate checking account. Do not pay any expenses with cash.

C. Keeps records of all deposits including the identity of the person or entity paying the money into the estate.

10. Determine all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable. Some may have priority over others.

11. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

12. NEVER borrow estate property or put it to your own personal use.

13. Within two (2) months of your appointment, you should prepare a Verified Inventory of the assets of the estate conforming with the requirements of I.C. 29-1-7.5-3-2 and have it available to be furnished to distributees on request.

14. DO NOT distribute any estate assets until assets (including personal property) are appraised, and consult with your attorney prior to making any distribution.

15. Prepare and file income tax returns for the tax year in which the decedent died and any returns *for* prior years if needed. Timely prepare and file any estate or fiduciary income tax returns and pay taxes as they come due.

16. After you fully complete the estate administration you must file a closing statement with the Court verifying that all proper claims, expenses and taxes have been paid, that all assets have been properly distributed, and that a copy of the closing statement has been sent to all distributees, fully accounting for all assets, expenses and distributions made to the beneficiaries.

17. Notify the Court and your attorney of any change in your address or telephone number.

18. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee. Time records will help the Court determine your fee.

19. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the beneficiaries and creditors of the estate even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature, Personal Representative  
Print, Personal Representative

\_\_\_\_\_  
Signature, Personal Representative  
Print, Personal Representative

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of a unsupervised estate.

\_\_\_\_\_  
Signature, Attorney

\_\_\_\_\_  
Print, Attorney



COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE  
OF SUPERVISED ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court. Keep one copy for your records.

Introduction:

You have been appointed as the personal representative of the estate of a deceased person. By your appointment, the Court has placed in you the highest trust that you will perform your duties in the best interests of all beneficiaries and creditors of the estate. It is important that you fully realize your duties and responsibilities. Listed below are some, but not all of them.

This is a SUPERVISED ADMINISTRATION. This means that your actions are supervised almost entirely by the court; therefore, before you take any action of importance to the Estate, such as the transfer or sale of assets, you must first seek the permission of the court. If you have any questions as to whether to seek court permission, you should discuss this with your attorney before taking any action.

You must be represented at all times by an attorney of record approved to so act by written order of the Court. Your attorney is required to reasonably supervise and guide your actions as personal representative unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the beneficiaries and creditors of the estate and by signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as personal representative.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration.

As personal representative, it is your responsibility to:

1. Inspect all documents and personal papers of the decedent and retain anything pertinent to tax reporting, location and value of assets, debts or obligations of or to the decedent or any other items of significance to the administration of the estate of the decedent.
2. Collect proceeds of life insurance on the life of the decedent which is payable to the estate. Obtain Form 712 from the insurance company, if needed for taxes.
3. Sign your name as 'Personal Representative for the Estate of (name of decedent)' on accounts and securities which are registered to the estate.
4. Locate, collect and maintain all property owned by the decedent. Keep motor vehicles and real estate insured and protected. Inventory the contents of any safe deposit box.
5. Prepare an inventory describing all property belonging to the estate, with date of

death values, no later than two (2) months after your appointment, and file it with the Court and serve a copy on all known heirs; beneficiaries and distributees of the estate. Obtain appraisals if necessary.

6. Open a separate checking account in your name as "personal representative for the estate of (the decedent)", and NEVER CO-MINGLE your funds or anyone else's funds with this account. Always make estate expenditures by check and retain proof of payment. Make sure the bank is willing to return cancelled checks to you if needed. Obtain a federal I.D. number for the checking account. Do not use your Social Security number or decedent's Social Security number.

It is recommended by the court that you leave the checkbook with your lawyer so that the lawyer can aid you in maintaining accurate records of receipts and expenditures for final accounting purposes.

A. DO NOT put any of your funds or anyone else's funds in the estate checking account.

B. Always pay for estate expenses by checks from the estate checking account. Do not pay any expenses with cash.

C. Keeps records of all deposits including the identity of the person or entity paying the money into the estate.

7. Ascertain all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable, Some may have priority over others. DO NOT MAKE any distribution to an heir or devisee without prior consent from your attorney. Always obtain receipts for all distributions made.

8. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.

9. Prepare and file income tax returns for the tax year in which the decedent died and any returns for prior years if needed. Timely prepare and file any estate or fiduciary income tax returns and pay taxes as they come due.

10. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

11. If the decedent owned a business or was involved in contracts which were not yet fully performed have your attorney obtain directions from the Court as to those matters.

12. DO NOT MAKE any distribution of personal property or real estate to an heir or devisee without prior Court order.

13. NEVER borrow estate property or put it to your own personal use.

14. Accounting:

Indiana law requires the estate to be closed within one (1) year of your appointment as personal representative. Before the estate can be closed, you must file with the Court a final accounting of your actions as personal representative.

A. Have your attorney file your final accounting, consisting of three (3) schedules, after the administration of the estate has been completed.

B. The first schedule must include all assets listed on the inventory, any income and additional assets obtained during administration, and any adjustments to the inventory.

C. The second schedule must be an itemized list of expenditures. Documentation for each expense shall include: (a) the payee; (b) check number or other identifying number on the instrument; (c) the amount disbursed; and (d) if the reason for disbursement is not apparent from the description of the payee, a description of the reason for the disbursement sufficient to substantiate the reason for the disbursement as part of the administration of the estate. Cancelled checks or facsimile copies of paid checks for each expenditure must be attached as evidence of payment, or in the alternative, an Affidavit in Lieu of Vouchers must be filed.

D. The third schedule must be a recapitulation indicating the remaining estate property after subtracting expenditures. A proposed distribution must be furnished to all interested parties, including beneficiaries of the estate.

15. After the Court approves your final account, make distribution to the proper people and file a supplemental report with the Court, attaching receipts, or in the alternative, an Affidavit in Lieu of Vouchers must be filed.

16. Notify the Court and your attorney of any change in your address or telephone number.

17. NEVER pay yourself or your attorney any fees from the assets of the estate without a prior Court Order, unless your attorney confirms to you that the law or local court rules allow you to reimburse yourself from estate assets for necessary expenses that you previously paid with your personal funds.

18. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee.

19. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

20. Do not sell an estate asset without prior Court Order unless the Will, in very specific terms, authorizes sale without court order, Consult your attorney about this.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the beneficiaries and creditors of the estate even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature, Personal Representative

\_\_\_\_\_  
Signature, Personal Representative

\_\_\_\_\_  
Print, Personal Representative

\_\_\_\_\_  
Print, Personal Representative

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of a supervised estate.

\_\_\_\_\_  
Signature, Attorney

\_\_\_\_\_  
Print, Attorney

## COURT'S INSTRUCTIONS TO GUARDIANS

Read carefully, date and sign one copy and return it to the court within ten (10) days. Keep a copy for your records.

You have been appointed guardian of an individual who, because of age or some incapacity, is unable to care for his or her own financial and/or personal affairs. It is important that you understand the significance of this appointment and your responsibility as guardian.

Upon being appointed guardian, you are required to post a bond in the amount set by the court and to take an oath to faithfully discharge your duties as guardian. The bond assures the court that you will properly protect the assets of the protected person.

Listed below are SOME of your duties. These apply whether or not the protected person is your relative. Ask the attorney for the guardianship to fully explain to you each of the items below and to inform you about other duties you have in your particular circumstances. Although the attorney will file all the papers with the court, the ultimate responsibility to see that all reports and papers are accurately prepared and filed rests with you.

As guardian, you are required:

1. To file with the court, within ninety (90) days after your appointment, a verified inventory of all property belonging to the protected person.
2. To file with the court, within thirty (30) days of the first anniversary of your appointment and, thereafter, every two (2) years, a verified account, this details all property and income received by, and all expenses paid from, the guardianship.
  - a. Vouchers or receipts or, in the alternative, an Affidavit in Lieu of Vouchers should be attached in order to verify each expenditure.
  - b. The present residence and general welfare of the protected person must be stated.
  - c. A report from the treating physician is required if the incapacitated person is an adult.
3. To pay bond premiums and court costs as they become due,
4. To file federal and state tax returns and to pay taxes for the protected person in a timely fashion.
5. To open an account, in your name as guardian, in which all of the cash assets of the protected person are deposited. This account shall be used for all payments and disbursements on behalf of the guardianship and the protected person. Cancelled checks or other written proof of payment should be maintained.
6. To obtain approval from the court to litigate matters concerning guardianship assets.
7. To file a final accounting upon termination of the guardianship. This should detail all property and income received and all expenses paid, with receipts to verify each expenditure.

A guardian is obliged to encourage self-reliability and independence of the protected person and to consider recommendations relating to the appropriate standard of support.

You must protect and preserve the protected person's property and conserve any property of the protected person in excess of the protected person's needs. Accurate accounts must be kept and guardianship funds should never be combined with your personal funds.

You may not make expenditure of investments from guardianship funds without court approval. Unauthorized use of guardianship assets may result in personal liability and/or criminal prosecution.

If any questions arise during the guardianship, you should consult with your attorney.

## GUARDIANS: A GUIDE TO PERFORMING YOUR FIDUCIARY DUTIES

### 1. INTRODUCTION

You have just taken an oath to faithfully discharge your duties as a guardian. This oath was intended to impress upon you that you have been placed in a position of the utmost trust and responsibility.

Most guardians are given the power and duty to handle an incompetent person's financial affairs. Occasionally, however, the court appoints a guardian when the incapacitated adult or minor has no assets or the powers granted the guardian do not encompass the property of the incapacitated person. If your appointment does not include control of any financial affairs, then your duties are limited to the specific purpose for which the guardianship was established.

Most of the remainder of this guide pertains to guardians who are appointed for the purpose of managing the property of a protected person. The specifics of your duties to handle the protected person's property will be discussed shortly, but you'll go a long way toward success by simply remembering that the property you will be handling is not your own. You must handle the property of the protected person as you would have the protected person handle your property.

### 11. SPECIFIC DUTIES

The person over whom you have been appointed guardian is under some disability which prevents him from competently handling his financial affairs. Your job is to handle this aspect of life for him. There's really nothing mysterious about what you'll be doing. Just as you personally have an income, pay bills, buy clothing and pay taxes, the protected person will in all likelihood have an income, owe bills, need clothing and be required to pay taxes. The only difference between the two of you is that you can handle these tasks on your own while the protected person requires your assistance to accomplish them.

Indiana Law specifically details the duties of the guardian. We now turn to an examination of that law.

#### A. BOND

In order to protect the protected person, every guardian must post a sufficient bond with the court before undertaking his duties. The amount of the bond is fixed at an amount equal to all of the protected person's personal property, plus the annual rental value of any real estate. While there is no exception to the bond

requirement, there may be an alternative. If the protected person owns assets above and beyond those necessary to provide for his needs, you may petition the court for permission to place the excess funds in a restricted account. Typically, a restricted account is a Certificate of Deposit with the following words typed on the face of the document: "not to be cashed without order of Delaware Circuit Court No. \_\_\_\_". If the guardianship is over a minor, the following words may be added: "or upon protected person reaching the age of 18". Provided there exist no other reasons for requiring bond, the restricted funds will then be exempt from the bond requirement.

Finally, you may be wondering why the court may have required only a minimal bond upon your appointment. The reason is simple—neither the court nor you are yet fully aware of the extent of the protected person's assets. Upon your filing of an inventory, the bond may be adjusted accordingly.

## B. INVENTORY

Indiana Law requires that every guardian of another persons' property file an inventory of that property within ninety (90) days of the date of his appointment. The inventory serves an important purpose: it appraises both you and the court of the extent of the protected person's property.

The inventory which you file must contain every item of the protected person's property which shall come to your possession or knowledge. The property must be classified as to its type (e.g., stocks, bank accounts, real estate) and, if encumbered by a mortgage or other lien, this fact must also be noted.

The fair market value of each item of the protected person's property must be indicated in the inventory. Many items, such as bank accounts, will pose no valuation problems. However, where there is reasonable doubt as to the value of property, the law permits the employment of a disinterested appraiser to assist in the valuation process. If an appraiser is employed, his name and address must be indicated on the inventory.

## C. TAKING POSSESSION OF THE PROTECTED PERSON'S PROPERTY

Your letters of guardianship represent your authority to act for the protected person. By representing these to persons or institutions who may be holding the protected person's property, you will be permitted to take that property into your possession.

The phrase "take possession" should not be construed literally. It is not intended that you run out and gather everything the protected person owns so that you can store it in your basement. Rather, you need to contact the persons or institutions holding your protected person's property, either show them or provide them with your copies of your letters, and arrange for the funds or property to be held in the protected person's name with your name listed as guardian. So that no one except you can draw on said funds, do not surrender the original copy of your letters of guardianship—certified copies of your letters may be obtained from the Delaware County Clerk's Office.

## D. PAYING THE PROTECTED PERSON'S BILLS AND EXPENSES

Your primary purpose as guardian of an adult incompetent's estate is to manage his financial affairs. As part of your management responsibility you will be required to pay all valid bills, expenses and claims of the protected person while constantly bearing in mind your duty to preserve the assets of your protected person.

In order to pay these bills, a checking account must be open. This account will be in your name as guardian. The fact that it is a guardianship account must be clearly stated on the face of each check. The bills and expenses which a particular protected person incurs will vary according to the circumstances. If your protected person lives in his own home, there will be utility and other bills associated with home ownership. On the other hand, if the protected person resides in a nursing home, these bills may be eliminated and included in a single monthly payment to the nursing home.

In addition to the ordinary and necessary expenses of your protected person, extraordinary claims may have to be paid on occasion. For example, a hospital might present you with a bill for services which it claims to have provided the protected person prior to your appointment as guardian or an individual might approach you and claim that the protected person owes him money on a contract.

The question which you should ask when presented with any bill, expense or claim on your protected person's property is whether the obligation is valid. Your resolution of this inquiry is critical for, if you negligently honor an invalid claim, the court may hold you personally liable for the amount of the protected person's funds expended.

You may also find it necessary or desirable to provide your protected person with a periodic allowance. Once again, since you have a duty to preserve the assets of the protected person, you must take care that the purpose for which the allowance is desired is a valid one.

In either case, whether you are paying bills or are desirous of providing a periodic allowance, you should consult with your attorney. If there is any question as to the legitimacy or necessity of a bill or claim, authority should be obtained from the court before making payment.

These responsibilities as they relate to a minor are different from those of an adult. A minor's guardian has all the responsibility and authority of a parent and, therefore, is personally responsible for the financial support of the minor. As a general rule, the guardian may not spend the minor's funds, but, instead, must preserve them. Only upon a showing to the court that the parents' income is insufficient to provide for the minor's support will the court approve the expenditure of the minor's funds.

#### E. THE CURRENT REPORT

The law requires that you file a written report of your activities as guardian within thirty (30) days of the first anniversary of your appointment. Thereafter, such reports are due every two years. You fulfill this duty by filing a current report and accounting. If all of a minor's assets are in a restricted account, the court may waive this accounting requirement.

The current report should contain all information pertinent to the protected person's condition, including his or her present residence and general welfare. If the protected person is an adult, a report of the treating physician verifying the incapacitated state of the person and propriety of the living arrangements must be included with the current report.

Regarding the accounting, the current report must include three schedules. The first will show the total amount of the protected person's property included in the inventory and any additional assets received to the date of the accounting. The second schedule must list all expenditures which were made on behalf of the protected person and, if such amounts are approved by the court, they will be credited against the amount of property for which you are chargeable. Finally, the third schedule will be a recapitulation, and it will show the balance on hand after subtracting the credits you are claiming from the total amount of the property which has come into your hands. The balance on hand should list what assets you still hold.



In order to verify your expenditures made on behalf of the protected person, you are required to attach cancelled checks or an Affidavit in Lieu of Vouchers, to the current report.

By now you should have realized that accurate record keeping is essential to the preparation of an acceptable current account. Remember that YOU are responsible for the protected person's property and that you are held personally liable for the expenditures of any amount which cannot be substantiated.

#### F. THE FINAL REPORT

A written Final Report is required in all guardianships. Most guardianships are established because of the protected person's age: he is either too young (under eighteen) and, therefore, legally disqualified from handling his own financial affairs or old age has in some way deprived him of the ability to handle this aspect of his life. Therefore, most guardianships terminate either upon the protected person's reaching majority or upon death.

When it is time to terminate the guardianship, you will need to file a final report. The report must indicate the reason for terminating the guardianship and must detail the disposition which you propose to make of the protected person's assets.

If the protected person is living, a hearing will be set to review the Final Report. A copy of the report must be furnished to the protected person and the protected person can file written objections before the hearing date. The court will examine the report to assure that your proposed disposition of the protected person's property is acceptable. The final account will be examined to assure that the expenditures which you made since the last accounting are permissible. Assuming the court approves, you will then be discharged from your duties and the guardianship will be closed.

#### 111. CONCLUSION

As guardian, you may be faced with difficult decisions as to how you should be handling the affairs of your protected person. You should realize that you need not make these decisions alone. If there is an expenditure which you desire to make or a sale of any of the protected person's personal or real property, you should consult with your attorney who will petition the court for its approval. If the court agrees with your proposal, it will enter an order to proceed. If the court disagrees, then an expenditure or sale for which you might have been held personally liable will have been avoided.

You are encouraged to contact your attorney to assist you with your duties. Since Indiana law and Delaware County Court policy forbids employees (including judges and court personnel) from practicing law, an attorney will be your sole source for counseling on legal matters.

Finally, don't be overwhelmed by your duties. Remember that the property you'll be handling is not yours, and if you handle the protected person's affairs as you would have him handle yours, then you should not have any problems.

I acknowledge receipt of a copy of the above instructions and have read and will follow these instructions carefully. I agree to properly carry out my duties.

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Signature, Guardian

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Signature, Guardian

\_\_\_\_\_  
Print, Guardian

\_\_\_\_\_  
Print, Guardian

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I acknowledge that I have carefully and completely discussed the above Instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of an incapacitated person.

\_\_\_\_\_  
Signature, Attorney

\_\_\_\_\_  
Print, Attorney

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTORNEY'S UNDERTAKING AND OBLIGATION

STATE OF INDIANA \_\_\_\_\_ )  
\_\_\_\_\_)SS: \_\_\_\_\_ IN THE DELAWARE CIRCUIT COURT NO.  
COUNTY OF DELAWARE \_\_\_\_\_ ) CAUSE NO.:

IN THE MATTER OF THE  
GUARDIANSHIP/ESTATE OF:

ATTORNEY'S UNDERTAKING AND OBLIGATION

I, the undersigned guardian or personal representative, having been appointed by the Delaware Circuit Court No. \_\_\_\_\_ on this date, hereby authorize my attorney, \_\_\_\_\_, to deposit all of the net guardianship/estate assets, in the amount of \$ \_\_\_\_\_, in an account or in a court approved investment with my name as guardian/personal representative with the restriction that withdrawal of principal or interest may be made ONLY on written order of Delaware Circuit Court No. \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Guardian/Personal Representative of:

I, the undersigned, as an officer of this court and as attorney for the above guardian/personal representative, hereby assume and undertake personal responsibility to the above-named protected person or the estate and to the Delaware Circuit Court No. \_\_\_\_\_; to make the restricted deposit above designated and to deliver copies of the SIGNATURE CARD and/or PASSBOOK and/or such other account or investment documents evidencing such restricted deposit, and the amount thereof, to the court within ten (10) working days from this date or to refund all of said funds to the court forthwith upon demand.

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Guardian/Estate  
Address:  
Phone:

All of which is so ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Marianne L. Vorhees, Judge  
Delaware Circuit Court No.1

\_\_\_\_\_  
Kimberly S. Dowling, Judge  
Delaware Circuit Court No.2

\_\_\_\_\_  
Linda Ralu Wolf, Judge  
Delaware Circuit Court No.3

\_\_\_\_\_  
John M. Feick, Judge  
Delaware Circuit Court No.4

\_\_\_\_\_  
Thomas A. Cannon, Jr., Judge  
Delaware Circuit Court No.5

ACKNOWLEDGEMENT BY PERSONAL REPRESENTATIVE OF RECEIPT OF LOCAL  
RULE REGARDING FEES IN PROBATE MATTERS

The undersigned, \_\_\_\_\_, having being appointed as the personal representative for the estate of \_\_\_\_\_, in Cause Number \_\_\_\_\_, does hereby acknowledge that the undersigned has received and had the opportunity to review LRI 8-ARO1-DLR-0011 regarding personal representative's and attorney's fees for probate matters in Delaware County, Indiana.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(\_\_\_\_\_)   
Personal Representative

I affirm under the penalties for perjury that the forgoing representations are true.

\_\_\_\_\_  
(\_\_\_\_\_)